

interference took place when it questioned two members of the state police who are union officials in the course of its investigation of trooper misconduct. The matter was heard before the PELRB on April 14, 1994, at which time the allegations regarding Corporal Richard D'Auria were withdrawn.

FINDINGS OF FACT

1. The State of New Hampshire (State) is a public employer of sworn troopers and other personnel within the meaning of RSA 273-A:1 IX.
2. The New Hampshire Troopers Association (Association) is the duly certified bargaining agent for sworn members of the New Hampshire Department of Safety, Division of State Police.
3. The parties executed a collective bargaining agreement (CBA) for the period July 1, 1993 through June 30, 1995.
4. These charges arose out of a disciplinary investigation which occurred within Troop B of the New Hampshire State Police, Milford during the summer and fall of 1993. Trooper Richard Farrell contacted then Trooper Louis Copponi, a long term member of the bargaining unit and president of the Association, in his role as union representative. Trooper Farrell told Trooper Copponi of an incident in which he had been involved which he believed would lead to a charge of misconduct and possible disciplinary procedures. He asked Trooper Copponi for assistance in contacting the union attorney and union president and others. Officer Copponi did so.
5. In mid-September, Officer Copponi was contacted by Detective Sergeant Neal Scott, a superior. Sergeant Scott radioed a request for a meeting to occur in a restaurant in Manchester. This was an unusual occurrence and Trooper Copponi understood it to be an order.
6. Upon meeting, Sergeant Scott questioned Trooper Copponi regarding what Officer Farrell had told him of the incident. Trooper Copponi testified that he expressed reservations at disclosing the information given him by Officer Farrell since he had been confided in as a union representative. Sergeant Scott said he wanted limited information and Officer Copponi answered the questions asked.

7. About one week later, Sergeant Scott spoke to Trooper Copponi about his reluctance to share information and expressed the opinion that the information requested was not confidential information and that he had been ordered to provide the information as part of a disciplinary investigation.
8. There had been no witness to the incident. Trooper Farrell had discussed the incident with fellow troopers and Sergeant Scott found the facts to be inconsistent from telling to telling. Sergeant Scott was looking for truthful information as to what was said by Officer Farrell to Trooper Cornellier. There is no dispute between the parties as to the fact that Officer Farrell approached Trooper Copponi seeking union assistance with the anticipated disciplinary procedure.
9. The Division of State Police operate under Rules and Regulations. Rule 1.3.6 is entitled "Obedience of Orders". Section A reads:

Division members shall respectfully and immediately obey all orders and instructions of their superiors. It shall be the duty of each employee of the Division of State Police to obey every lawful command or order issued orally or in writing by a superior officer, . . .

Rule 1.3.7 is entitled "Conflicting Orders". Section A reads in pertinent part:

Division members who are given an otherwise proper order which is in conflict with a previous directive shall respectfully inform the superior officer issuing the order of the conflict. If the superior officer issuing the order does not alter or retract the conflicting order, the order shall stand. Under these circumstances, the responsibility shall be upon the superior officer. Division members shall obey the conflicting order and . . . Division members shall not obey any order which would require them to commit any illegal

act. . . .

Rule 1.8.2, Section A, reads:

A commanding officer of an accused division member, upon becoming aware of an alleged violation of any rule or regulation shall, after notifying the administrative officer, make a preliminary investigation. Unless otherwise ordered by the director, the commanding officer shall continue the investigation under the direction of the administrative officer. The director will then be notified with a report of the alleged violation and, if the investigation has yielded sufficient evidence, recommendations for: (1) corrective action, (2) disciplinary action by the director, (3) exoneration.

Hearing may be held at the discretion of the director and director and this may result in suspension, transfer, demotion or dismissal.

10. Section 1.1 establishes the relationship between the parties. It names the Association as exclusive representative of all classified employees in the bargaining unit with the exception of those excluded by statutory definition. It places the responsibility of representing the interest of all employees in the unit upon the Troopers Association.

DECISION AND ORDER

RSA 106-B:5 places disciplinary matters within the authority of the Director of the Division of State Police. The right of this public employer to conduct disciplinary proceedings is a managerial prerogative exclusive to the employer. Appeal of the State of New Hampshire (New Hampshire Public Employee Labor Relations Board), (July 27, 1994). State Employees of N.H. Inc., v. The New Hampshire PELRB, 118 NH 885, 887 (1978). Though the disciplinary procedure may not be modified by the collective bargaining process, it is tempered in that an employee subject to disciplinary procedure has certain rights which include the right to representation by a union representative early in the process prior to hearing, if it is reasonable to anticipate discipline may result. NLRB v. Weingarten, Inc., 420 US 251 88 LLRM 2689 (1975). These rights obtain in New Hampshire Public Employment. IBPO v. City of Manchester, PELRB Decision 92-73.

It is apparent that Trooper Farrell anticipated discipline when he approached Trooper Copponi in his role as union representative. In taking Trooper Farrell's information, Trooper Copponi was beginning the administrative process of representation which is a recognized function of the Association. Trooper Farrell is guaranteed the protections of Chapter 273 and it is the Union's obligation to administer the processes that protect those rights on which Farrell relied. RSA 273-A:5 I (a) and (b). The right to union representation would be meaningless if, upon disclosing the facts needed for representation, the disclosure were then available to the employer upon asking. The union representative would become little more than a conduit. It is the intention of the Weingarten ruling and those cases and statutes which extend union representation to protect the employee rather than to further the cause of the employer.

An unfair labor practice has occurred in the present case since the sole reason Trooper Copponi was approached by Sergeant Scott was because of the fact that Trooper Farrell revealed information to him as a union representative. Trooper Copponi was not an eye witness, nor does he have any other connection with the incident between Trooper Farrell and Trooper Corneiller. Sergeant Scott had heard varying versions of the incident. He approached Trooper Copponi precisely because he was a union representative and so a reliable hearsay source to whom Farrell would speak candidly because he knew his future depended on union representation.

In pursuing its disciplinary investigation, the Division of State Police has all of the options it might exercise under its managerial prerogative. This does not extend to allowing the employer to interfere with the Union in its role as representative of the individual member accused of misconduct. The Division of State Police is directed to cease and desist from the practice of ordering a union representative to disclose information given by a member who is anticipating disciplinary action by the employer, is under investigation and so has sought union representation.

So Ordered.

Signed this 31st day of AUGUST, 1994.


 EDWARD J. HASELTINE
 Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
 Members Seymour Osman and E. Vincent Hall present and voting.